Calendar No. 1095

98TH CONGRESS
2d Session

SENATE

REPORT
98-573

FACILITATING THE EXCHANGE OF CERTAIN LANDS IN SOUTH CAROLINA

AUGUST 3 (legislative day, JULY 30), 1984.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 648]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 648) to facilitate the exchange of certain lands in South Carolina, having considered the same, reports favorably thereon without amendment, and recommends that the bill do pass.

PURPOSE

S. 648, as reported, would prohibit the Federal Energy Regulatory Commission [FERC] from charging the South Carolina Public Service Authority [SCPSA] an annual fee for the use of certain National Forest System lands within the boundary of the Santee-Cooper hydroelectric project if such lands are conveyed by the Department of Agriculture to the authority.

BACKGROUND

The South Carolina Public Service Authority has developed, and operates the Santee-Cooper hydroelectric project. The project is licensed by FERC under authority of the Federal Power Act of 1920 (16 U.S.C. 803(e)).

The project inundates 1,276 acres of the Francis Marion National Forest, which was withdrawn for power purposes. Section 10(e) of the Federal Power Act requires that licensees pay the United States reasonable annual fees for the use of Federal lands. Currently, the SCPSA is paying an annual fee of $13,454 for use of the 1,276 acres of National Forest System lands.

31-010 O

S313-31

In an effort to avoid paying these annual fees, the authority has reached agreement with the Forest Service on a land exchange whereby the Forest Service would convey the 1,276 acres which are inundated to the authority, and would receive 210 acres of productive forest land. The exchange requires the proposal of the FERC. The FERC approved the exchange in April 1981, but advised that they did not have the authority to waive the power withdrawal and therefore, the authority would have to continue to pay the annual use fee. The authority is unwilling to exchange any lands with the Forest Service if it would have to continue to pay rent on the lands it would receive in the exchange. In effect, mutually beneficial exchange is being thwarted because of a 1920 law which was enacted for another purpose.

LEGISLATIVE HISTORY

S. 648 was introduced by Senator Thurmond on March 2, 1983. A hearing was held before the Subcommittee on Public Lands and Reserved Water on May 22, 1984. The administration supports the measure and has recommended expanding the measure to include all FERC licensed projects on Federal lands.

At a business meeting on August 1, 1984, the Senate Committee on Energy and Natural Resources ordered S. 648 favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on August 1, 1984, by unanimous vote of a quorum present recommends that the Senate pass S. 648 as described herein.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 3, 1983.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 648, a bill to facilitate the exchange of certain lands in South Carolina, as ordered reported by the Senate Committee on Energy and Natural Resources, August 1, 1984.

This bill would prohibit the Federal Energy Regulatory Commission [FERC] from charging the South Carolina Public Service Authority an annual fee for the use of certain National Forest System lands if such lands are conveyed to the authority. Enactment of S. 648 would make possible conveyance of those lands; in return, the Forest Service would receive a 210-acre parcel within the national forest. The only budget impact would be the loss to the Federal Government (and a savings to the authority) of about $13,000 annu-

ally in fees currently paid to FERC, of which about $5,000 would have been paid, in turn, to the State of South Carolina.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 648. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 648 as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports received by the committee from the Department of Agriculture and the Federal Energy Regulatory Commission setting forth executive agency recommendations relating to S. 648 are set forth below:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, June 4, 1984.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 648, "To facilitate the exchange of certain lands in South Carolina."

The Department of Agriculture recommends that S. 648 be enacted if amended to apply to all such situations occurring on National Forest System lands.

S. 648 would prohibit the Federal Energy Regulatory Commission from charging the South Carolina Public Service Authority an annual fee for the use of certain National Forest System lands within the boundary of the Santee-Cooper hydroelectric project if such lands are conveyed by the Department of Agriculture to the Authority.

Section 10(e) of the Federal Power Act of 1920 (16 (U.S.C. 803(e)) requires that licensees pay the United States reasonable annual fees for the use of Federal lands. This bill would facilitate the conveyance of the Federal lands in question to the South Carolina Public Service Authority upon certification by the Department of Agriculture to the Federal Energy Regulatory Commission [FERC] that adequate consideration has been received. The Federal land is a part of the Francis Marion National Forest but has been withdrawn for power purposes by FERC under authority of section 24 of the Federal Power Act of 1920. About 1,276 acres of the national

forest are under permit to the authority for use in the hydroelectric project. Most of the land is under water. An annual fee, currently $13,454, is charged for the use of these lands.

In an effort to avoid paying these annual fees, the authority has successfully reached agreement with the Forest Service on a land exchange. The Forest Service would convey the 1,276 acres to the authority which would convey to the Forest Service a 210-acre parcel within the national forest. Such an exchange is authorized by section 7 of the Weeks law (16 U.S.C. 485) which requires the two parcels to be of equal value. The exchange proposal requires the approval of FERC. This approval was given by a FERC order dated April 6, 1981. However, FERC indicated in so doing that the authority would have to continue paying rent for the land it had acquired. FERC has stated that it does not have authority to vacate the withdrawal of the Federal land inasmuch as it will continue to administer a license and thus is required to collect a fee under section 10(e) of the 1920 act. This situation has precluded the authority from consummating the land exchange.

Other hydroelectric projects are similarly affected by FERC's action on this case. The Cleveland Cliffs project in Michigan, a project near the international border in Minnesota, and the Sultan basin project in Washington are paying fees for inundated National Forest System lands and have proposed land exchanges. While we support the purposes of S. 648, we believe that it should apply to all projects where land exchanges are precluded by the 1920 act's requirement that a fee be charged.

Finally, in order to conform the bill to our land exchange authorities, and the administration's policy of seeking fair market value consideration for the conveyance of Federal lands, we recommend that S. 648 be amended to require farm market value consideration for any such conveyance instead of "adequate consideration in lieu of annual charges."

Amendments to accomplish our recommendation are in the enclosure.

S. 648, if amended as we recommend, would have an advantage to the public by replacing flooded lands with those capable of producing other benefits, such as timber, wildlife habitat, and recreation opportunities. The States and counties would benefit through the Federal Government's sharing of receipts from the management of the resources of the acquired national forest lands.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

JOHN R. BLOCK,
Secretary.

Enclosure.

USDA RECOMMENDED AMENDMENTS—S. 648

1. In the title delete "exchange" and insert "conveyance"; delete "in South Carolina" and insert "Federal" before "lands".

2. On lines 6 and 7, page 1, delete "the South Carolina Public Service Authority's Santee-Cooper hydroelectric project (Federal

Energy Regulatory Commission licensed project numbered 199)" and insert "a Federal Energy Regulatory Commission licensed project".

3. On line 2, page 2 delete "adequate" and insert "fair market value".

4. On line 3, page 2 delete "in lieu of annual charges." and insert "for such conveyance."

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, July 13, 1984.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, here are my views on S. 648 and the United States Department of Agriculture's recommended amendments to that bill.

After an exchange of correspondence with the Commission, Senator Strom Thurmond introduced S. 648 on March 2, 1983. The bill would facilitate a proposed land exchange between the Forest Service, U.S. Department of Agriculture (Agriculture) and the South Carolina Public Service Authority (authority), involving Federal lands used by the authority's Santee-Cooper hydroelectric project, licensed by the Commission as project No. 199. Under the bill, the Commission would no longer collect annual charges, pursuant to section 10(e) of the Federal Power Act (act), 16 U.S.C. § 803(e) (1976), for lands used by the project but later conveyed directly to the licensee subject to the power reservation under section 24 of the act, 16 U.S.C. § 818 (1976). The annual charges that otherwise would be collected would be considered in the exchange and conveyance of lands to the licensee.

Inasmuch as the bill affects the annual charges for only one project, the administrative burden on the Commission, in developing and maintaining records identifying affected lands, would be minimal. Similarly, the impact of foregoing the collection of annual charges, and the distribution of those charges pursuant to section 17 of the act, 16 U.S.C. § 810 (1976), would be minimal.

Under Agriculture's recommended amendments, the potential impact of the bill is greater, both in terms of administrative burden on the Commission and of foregone collection and distribution of annual charges under the act. The legislation would still apply only to lands conveyed after enactment, but it would apply to all projects using Federal lands rather than just the Santee-Cooper project. The potential impact cannot be defined at this time.

One of Agriculture's recommended amendments would change the language, on page 2, lines 2 and 3 of the bill, to remove the reference to "adequate consideration in lieu of annual charges." I suggest that, if so amended, the legislative history should make clear that among the matters to be considered in the exchange and conveyance of Federal lands used by a licensed project, are the annual charges that would be collected in the absence of the legislation. Consideration of the foregone annual charges under the act would recognize all the Federal interests respecting the Federal lands used by a licensed project.

I appreciate the opportunity to comment on the proposed legislation. If I can be of further assistance in this or any other Commission matter, please let me know.

Sincerely,

RAYMOND J. O'CONNOR,
Chairman.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the committee notes that no changes in existing law are made by the bill S. 648 as reported.

○